UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,346	12/29/2003	John Dimitroff	200304140-2	8132

7590 05/01/2007

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P. O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER	
NGUYEN, PHUOC H	
ART UNIT	**PAPER NUMBER**
2143	

MAIL DATE	DELIVERY MODE
05/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/748,346	DIMITROFF ET AL.	
	Examiner	Art Unit	
	Phuoc H. Nguyen	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 January 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-29* is/are pending in the application.

4a) Of the above claim(s) *22-29* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 11 is rejected under 35 U.S.C. 102(e) as being unpatentable over Teare et al. U.S. Patent 6,151,624.

Re claim 11, Teare discloses a computer system for operation in a network, the system comprising a storage system, a network interface, and a processor (e.g. Figure 1B); the system containing a local copy of a portion of a distributed metadata registry (Abstract) and an agent for monitoring communications between machines of the computer network and the compute system for communications relevant to a command object of the metadata registry, the agent being configured to modify the command object by adding thereto network address information of machines of the computer network that should participate in a communication affecting the metadata registry to maintain coherency of the metadata registry (e.g. col. 8 lines 37-53; col. 19 lines 12-26 and 40-47; col. 20 lines 21-27 and col. 26 1st paragraph).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 12-15, and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teare et al. U.S. Patent 6,151,624 in view of Lumelsky et al. U.S. Patent 6,460,082.

Re claims 12-15, Teare discloses the system containing a local copy of a portion of a distributed metadata registry (Abstract) and an agent for monitoring communications between machines of the computer network and the compute system for communications relevant to a command object of the metadata registry; however, Teare fails to teach the command object further comprises a quality-of-service object comprising a desired capacity, latency, and bandwidth, wherein the computer system comprises an allocator that selects a resource of the storage system according to criteria comprising the desired capacity, latency, and bandwidth of the quality-of-service object and available resource information of the metadata registry.

Lumelsky discloses a quality-of-service object comprising a desired capacity, latency, and bandwidth, wherein the computer system comprises an allocator that selects a resource of the storage system according to criteria comprising the desired capacity, latency, and bandwidth of the quality-of-service object and available resource information of the metadata registry (e.g. Figures 5 and 7; col. 5 2nd paragraph).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Lumelsky's teaching into Teare's system by allocating selects

resource of the storage system based on the desired capacity, latency, and bandwidth of quality-of-service as a result it will enables coordinating of all system resources for polling, re-assignment and release of resource to provide a QoS requested by an application.

Re claims 20-21, Teare discloses the system containing a local copy of a portion of a distributed metadata registry (Abstract) and an agent for monitoring communications between machines of the computer network and the compute system for communications relevant to a command object of the metadata registry; however, Teare fails to teach the metadata registry comprises information about processing resources of the network, and wherein the quality-of-service object comprises desired processing resources, and the allocator uses at least one of the information about processing resources of the network and the desired processing resources to select a resource..

Lumelsky discloses the metadata registry comprises information about processing resources of the network, and wherein the quality-of-service object comprises desired processing resources, and the allocator uses at least one of the information about processing resources of the network and the desired processing resources to select a resource (e.g. Figures 5 and 7; col. 5 2nd paragraph).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Lumelsky's teaching into Teare's system by allocating selects resource of the network based on the desired processing resources of select resource as a result it will enables coordinating of all system resources for polling, re-assignment and release of resource to provide a QoS requested by an application.

5. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Teare et al. U.S. Patent 6,151,624 in view of Raciborski et al. U.S. Publication No. 2005/0160154.

Re claims 20-21, Teare discloses the system containing a local copy of a portion of a distributed metadata registry (Abstract) and an agent for monitoring communications between machines of the computer network and the compute system for communications relevant to a command object of the metadata registry; however, Teare fails to teach the metadata registry comprises network topology information and network load information and the resource allocator uses the network topology information and the desired network hop information and network load information to select a resource

Lumelsky discloses the metadata registry comprises network topology information and network load information and the resource allocator uses the network topology information and the desired network hop information and network load information to select a resource (e.g. pages 7-8 paragraph [0092]).

It would have been obvious to one of the ordinary skill in the art at the time of the invention was made to incorporate Lumelsky's teaching into Teare's system by allocating selects resource based on the desired network hop and load information as a result it will improve the quality of service when distributing content [e.g. page 1 paragraph [0003]).

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection

is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 11-21 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2, and 4-8 of U.S. Patent No. 6,742,020. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1, 2, and 4-8 of a Patent Application No. 6,742,020 contains every element of claims 11-21 of the instant application and thus anticipated the claims of the instant application. Claims of the instant application therefore are not patently distinct from the earlier patent claims and as such are unpatentable over obvious-type double patenting. A later patent/application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARB LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

"Claim 12 and Claim 13 are generic to the species of invention covered by claim 3 of the patent. Thus, the generic invention is "**anticipated**" by the species of the patented invention. Cf., Titanium Metals Corp. v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (holding that an earlier species disclosure in the prior art defeats any generic claim) 4 . This court's predecessor has held that, without a terminal disclaimer, the species claims preclude

issuance of the generic application. In re Van Ornum, 686 F.2d 937, 944, 214 USPQ 761, 767 (CCPA 1982); Schneller, 397 F.2d at 354. Accordingly, absent a terminal disclaimer, claims 12 and 13 were properly rejected under the doctrine of obviousness type double patenting." (In re Goodman (CA FC) 29 USPQ2d 2010 (12/3/1993).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6650620

U.S. Patent No. 6678700

U.S. Patent No. 6493720

U.S. Patent Publication No. 2003/0046396

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuoc H. Nguyen whose telephone number is 571-272-3919. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Phuoc H Nguyen
Examiner
Art Unit 2143

April 15, 2007